



BILLING CODE: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0100; FRL-9918-35-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana – Air Quality, Subchapter 7, Exclusion for De Minimis Changes; Final Rule

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to correct final rules pertaining to the State of Montana's State Implementation Plan (SIP). On February 13, 2012, EPA took final action to partially approve and partially disapprove SIP revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. EPA subsequently discovered errors in our February 13, 2012 final action related to the materials incorporated by reference and the associated regulatory text that inadvertently reversed portions of our July 8, 2011 final action. EPA is taking final action, under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective **[INSERT date 30 days after date of publication in Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2011-0100. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information may not be publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, EPA, Region 8, Mail Code 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials ARM mean or refer to the Administrative Rules of Montana.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials SIP mean or refer to State Implementation Plan.
- (v) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

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I. Background

In our rule published on February 13, 2012 (77 FR 7531), EPA took final action to partially approve and partially disapprove SIP revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. On page 7534, third column, under the regulatory text in 40 CFR 52.1370(c)(72)(i) Incorporation by reference, paragraph (A), EPA inadvertently incorporated by reference all of Administrative Rules of Montana (ARM), 17.8.740, Definitions. We are taking final action to amend the regulatory text in 40 CFR 52.1370(c)(72)(i)(A) to specify that EPA only approved the phrase “, except when a permit is not required under ARM 17.8.745” in ARM 17.8.740(8)(a) and the phrase “, except as provided in ARM 17.8.745” in ARM 17.8.740(8)(c). Therefore, the regulatory text in 40 CFR 52.1370(c)(72)(i)(A) reads as set forth in the regulatory text of this final rule.

This correction is consistent with: (1) the preamble of our February 13, 2012 final rule (77 FR 7531, 7534); and (2) the July 8, 2011 final rule (76 FR 40237) and associated regulatory text found in 40 CFR 52.1370(c)(70)(i)(B)(2) where we disapproved the phrase in ARM 17.8.740(2) “includes a reasonable period of time for startup and shakedown and” and the definitions in ARM 17.8.740(10) and (14), “Negligible risk to the public health, safety, and welfare and to the environment” and “Routine Maintenance, repair, or replacement,”

respectively. We also confirm that our approval of the phrase “unless the increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit, or” in 17.8.764(1)(b) of our July 8, 2011 final rule (76 FR 40237) is accurate, while the same phrase in the preamble of the July 8, 2011 and February 13, 2012 final rules is incorrect.

In this action, EPA is also taking final action to correct the associated IBR material for our February 13, 2012 (77 FR 7531) rule by striking out the aforementioned phrases (ARM 17.8.740(2), ARM 17.8.743(1)(c)) and two definitions (ARM 17.8.740(10), ARM 17.8.740(14)) that were inadvertently included in the IBR SIP material from the State’s May 28, 2003 submittal.

For more detailed information regarding these February 13, 2012 and July 8, 2011 actions, see 77 FR 7531 and 76 FR 40237.

II. Response to Comments

We did not receive any comments on our August 5, 2014 proposal (79 FR 45393) to correct final rules pertaining to the State of Montana’s SIP.

III. Final Action

EPA is taking final action to amend the text in 40 CFR 52.1370(c)(72)(i)(A) to read as follows: “Administrative Rules of Montana, 17.8.740, Definitions, ARM 17.8.740(8)(a), the phrase ‘, except when a permit is not required under ARM 17.8.745’ and ARM 17.8.740(8)(c), the phrase ‘, except as provided in ARM 17.8.745’; 17.8.743, Montana Air Quality Permits – When Required, (except the phrase in 17.8.743(1)(b), ‘asphalt concrete plants, mineral crushers, and’, and 17.8.743(1)(c)); and 17.8.764, Administrative Amendment to Permit; effective 12/27/2002.”

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule

does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: October 8, 2014.

Shaun L. McGrath
Regional Administrator
Region 8

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR Part 52 as follows:

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB - Montana

2. Section 52.1370 is amended by revising paragraph (c)(72)(i)(A) to read as follows:

§ 52.1370 Identification of Plan.

* * * * *

(c) * * *

(72) * * *

(i) * * *

(A) Administrative Rules of Montana, 17.8.740, Definitions, ARM 17.8.740(8)(a) only, the phrase “, except when a permit is not required under ARM 17.8.745” and ARM 17.8.740(8)(c) only, the phrase “, except as provided in ARM 17.8.745”; 17.8.743, Montana Air Quality Permits – When Required, (except the phrase in 17.8.743(1)(b), “asphalt concrete plants, mineral crushers, and”, and 17.8.743(1)(c) in its entirety); and 17.8.764, Administrative Amendment to Permit; effective 12/27/2002.

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